

VICTORIA POLICE

# PORT Legal Powers Training

*Public Order legislation and common law powers.*

*Prosecutions Frontline Support Unit - Melbourne*





VICTORIA POLICE

# Information Package Outline

- Legislation and offences
- Victoria Police Policy and Guidelines
- Civil litigation risks
- PSC risks and issues



For Official Use Only

OFFICIAL: Sensitive



# *Charter of Human Rights and Responsibilities Act 2006*



VICTORIA POLICE

- Victoria Police must give proper consideration to relevant Charter rights when making a decision – s 38(1)
  - Understand, generally, which rights might be affected by the decision and, if so, how they might be interfered with
  - Turn your mind to the impacts for that person's human rights
  - Identify other interests and obligations
  - Balance the competing public interests against those of the person



For Official Use Only

OFFICIAL: Sensitive



# *Charter of Human Rights and Responsibilities Act 2006*



VICTORIA POLICE

- It is unlawful for a public authority to act in a way that is incompatible with a human right – s 38(1)
- S 38(2) states that s 38(1) does not apply if the public authority could not have acted differently as a result of a statutory provision or otherwise under law.
- Consider whether a Charter right has been engaged in the circumstances of the case;
- Determine whether a public authority has limited or interfered with the right through its action or inaction; and
- With reference to the s 7(2) proportionality analysis, determine whether any limitation imposed was reasonable and justified in the circumstances



For Official Use Only

OFFICIAL: Sensitive



# Limiting a persons rights under the Act



VICTORIA POLICE

- S7 – (2) A human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors including—
  - (a) the nature of the right; and
  - (b) the importance of the purpose of the limitation; and
  - (c) the nature and extent of the limitation; and
  - (d) the relationship between the limitation and its purpose; and
  - (e) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.



For Official Use Only

OFFICIAL: Sensitive



# *Charter of Human Rights and Responsibilities Act 2006*



- S15 – (2) Every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds
  - (3) Special duties and responsibilities are attached to the right of freedom of expression and the right may be subject to lawful restrictions reasonably necessary
  - To respect the rights and reputation of other persons; or
  - For the protection of national security, public order, public health or public morality.
- S16 – (1) Every person has the right of peaceful assembly.

HUMAN RIGHTS READY RECKONER



For Official Use Only

OFFICIAL: Sensitive



# Police Legal Powers



VICTORIA POLICE

- Victoria Police is a statutory body, and as such it relies upon:
  - Legislation
  - Common Law
  - Judicial instruments (Warrant, Orders etc.)
- to take action, make arrests, enter private places.
- The organisation then overlays policy, procedure and guidelines



For Official Use Only

OFFICIAL: Sensitive



VICTORIA POLICE

# Police Role

- Section 8 of the *Victoria Police Act 2013* defines the role of Victoria Police;

*The role of Victoria Police is to serve the Victorian community and uphold the law so as to promote a safe, secure and orderly society*



For Official Use Only

OFFICIAL: Sensitive





# Police Role



VICTORIA POLICE

- Victoria Police performs this role by carrying out its general functions:
  - preserving the peace
  - protecting life and property
  - preventing the commission of offences
  - detecting and apprehending offenders
  - helping those in need of assistance



For Official Use Only

OFFICIAL: Sensitive



# Police Role



VICTORIA POLICE

- Police need to facilitate the community's right to the implied freedom of political communication.
  - If Victorians want to protest lawfully, then police will protect this right
- Rights are not absolute however. Police (especially the Police Commander) will balance competing rights against each other
  - Your right to protest, against my right to freedom of movement
  - Your right to freedom of speech against using obscene/indecent/threatening language.



For Official Use Only

OFFICIAL: Sensitive



VICTORIA POLICE



For Official Use Only

OFFICIAL: Sensitive



VICTORIA POLICE

# Common misconceptions

- Permits to protest
- Flag burning
- Why aren't the police doing anything?
  - Summary offences
  - Loss of resources for period of time
  - Change in focus



For Official Use Only

OFFICIAL: Sensitive



VICTORIA POLICE

# Public Order Common Powers

- Powers to arrest
  - s 458 *Crimes Act 1958*
  - s 459 *Crimes Act 1958*
- Power to use Force
  - s 462A *Crimes Act 1958*
- Power to Direct
  - Breach of the Peace – Common Law
- Power to Move On
  - s 6 *Summary Offences Act 1966*



For Official Use Only

OFFICIAL: Sensitive



VICTORIA POLICE

# s458 Arrest in Public Order Setting

- A person may at any time without warrant arrest any person they:
  - Find committing any offences, where they believe on reasonable grounds apprehension is necessary
    - Endure their attendance before a court
    - ***To preserve public order***
    - Prevent the continuation or repetition of the offence, or commission of a further offence
    - For the ***safety and welfare of members of the public***



For Official Use Only

OFFICIAL: Sensitive



VICTORIA POLICE

## Indictable offences

- **S 195H - Affray** – unlawful fighting/violence or force used against another. A bystander of reasonable firmness, if present, reasonably likely to be terrified
- **S 195I - Violent Disorder** – 6 or more persons present together who use/threaten unlawful violence with common goal, conduct of them causes injury or damage to property
- **S 18 - Intentionally/Recklessly Cause Injury**
- **S 197 - Criminal Damage**
- **S 31 - Assault/Resist Emergency Worker** - assaults or threatens to assault, resists or intentionally obstructs an EW on duty, knowing or being reckless as to whether the person was an EW.



For Official Use Only

OFFICIAL: Sensitive





VICTORIA POLICE

# Breach of the Peace – common law



For Official Use Only

OFFICIAL: Sensitive





VICTORIA POLICE

## Definition

- Whenever harm is actually done or sought to be done to a person or in [their] presence to [their] property or a person is in fear of being so harmed through an assault, an affray, a riot, unlawful assembly or other disturbance”

*(R v Howell [1981] 3 All ER 383)*

- BoP is not a criminal offence – cannot arrest a person for BoP
- Power to Detain, Remove (persons and property) Direct Enter
  - Power to do what is reasonable, including use of force



For Official Use Only

OFFICIAL: Sensitive



# Reasonable actions



VICTORIA POLICE

- Breach of Peace must be imminent or actually occurring
- Members can take reasonable steps which are necessary in all the circumstances
  - enter a private premises without consent
  - seize (temporarily) property
  - direct the separation of rival groups
  - prevent people entering the premises or area
  - detain persons (NOT ARREST)
- Breach of the Peace works in combination with resist, hinder, obstruct.



For Official Use Only

OFFICIAL: Sensitive



# Summary Offences Act

## Move On Powers



VICTORIA POLICE

### Section 6 - Direction by police to move on

(1) police officer **may** give a direction to a person/s in a public place to leave public place (or part of public place)

If the member suspects on reasonable grounds that—

- The person/s are breaching, or are likely to breach the peace s6(1)(a)
- The person/s are endangering, or are likely to endanger, the safety of any other person s6(1)(b)
- The behaviour of the person/s is likely to cause injury to a person or damage to property or is otherwise a risk to public safety s6(1)(c)

(2) – Direction may be given orally

(3) Direction to not return to the public place for up to 24 hours



For Official Use Only

OFFICIAL: Sensitive



VICTORIA POLICE

## Restrictions

- (5) This section does not apply in relation to a person who, whether in the company of other persons or not, is—
  - (a) picketing a place of employment; or
  - (b) demonstrating or protesting about a particular issue; or
  - (c) speaking, bearing or otherwise identifying with a banner, placard or sign or otherwise behaving in a way that is apparently intended to publicise the person's view about a particular issue.



For Official Use Only

OFFICIAL: Sensitive



VICTORIA POLICE

## Common offences

- Obstruct road / footpath
- Criminal / wilful damage
- Control of Weapons Act offences
- Resist / hinder
- Lock-ons / trespass / besetting premises
- Offensive language / threatening words etc
- Summary and indictable assaults
- Affray
- Cruelty to animals – police horses
- And so on.



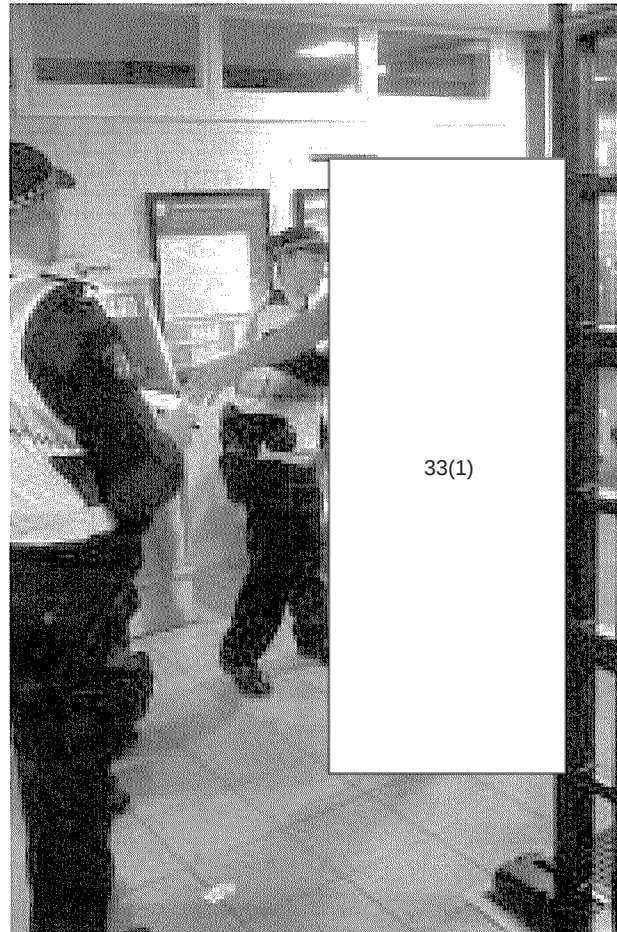
For Official Use Only

OFFICIAL: Sensitive



VICTORIA POLICE

# Control of Weapons Act – Declared Area searches



For Official Use Only

OFFICIAL: Sensitive



# Operation OMNI



VICTORIA POLICE

- *Control of Weapons Act 1990* allows for CCoP to declare an area as a designated area.
- A police officer in a designated area may exercise limited search powers – person/vehicle/thing
- Area must be no larger than reasonably necessary to allow effective response to threat of violence or disorder
- Duration must be no longer than reasonably necessary and cannot exceed 12 hours



For Official Use Only

OFFICIAL: Sensitive



VICTORIA POLICE

# Powers

- s10G – A police officer may, without warrant, stop and search a person or thing under their control for weapons, if the person/thing is in a public place within the designated area
- Search must be the least invasive search that is practicable in the circumstances.
- Schedule 1 states search may be done initially by a electronic metal detection device, may include requesting person to turn out pockets/bag etc, pat down area of pockets.
- If as a result of an initial wand or pocket pat down search, police officer considers that the person may be concealing a weapon, a police officer may conduct a further search – pat down of all outer clothing/removal of outer layer etc.



For Official Use Only

OFFICIAL: Sensitive





VICTORIA POLICE

## Who to search?

- s8(2) – Every person has the right to enjoy his/her human rights without discrimination
- s10 – A person must not be –
  - (b) treated or punished in a cruel, inhumane or degrading way
- s14 – Every person has the right to freedom of thought, conscience, religion and belief...
- s15 (1) and (2) – Every person has the right to hold an opinion without interference AND every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds
- s16 – Every person has the right of peaceful assembly AND every person has the right to freedom of association with others....
- Select persons at RANDOM, do not target ONE demographic because of race/appearance or reputation



For Official Use Only

OFFICIAL: Sensitive



VICTORIA POLICE

# Face Coverings (direction to leave)

- Section 10KA – A police officer may direct a person wearing a face covering to leave a designated area if
  - The police officer reasonably believes the person is using the face covering primarily
    - to conceal their identity; OR
    - To protect themselves from the effects of OC; AND
  - The person refuses to remove the face covering when requested to do so.
- The police officer reasonably believes that the person intends to engage in an affray or violent disorder (No face covering required)



For Official Use Only

OFFICIAL: Sensitive



VICTORIA POLICE

# Types Face Coverings

- Anarchy masks
- Bandannas
- Flags
- Safety glasses
- Dust masks
- Scarves
- Hoodies – Kenny from South Park
- Niqab/Burqa



**ITEM MUST BE COVERING THE FACE AT THE TIME OF REQUEST TO  
REMOVE**



For Official Use Only

OFFICIAL: Sensitive



VICTORIA POLICE

# Duration of Direction

- Face covering – for as long as the face covering is on
- Affray/Violent disorder – Expiration of the period of operation of the declaration of the designated area
- If person leaves area with face covering on, can return if removed.
- If puts f/c back on before leaving area – request to remove and/or leave area.



For Official Use Only

OFFICIAL: Sensitive



# Police obligations



VICTORIA POLICE

- *Charter of Human Rights and Responsibilities Act 2006* applies.
- Search subjects must be selected at random
- s10I requires police officer to advise intended subject that he/she intends to search the person, and that they are authorised to do so.
- Must give/offer the subject a search notice that advised
  - that the subject is within a public place within a designated area, and
  - that a declaration is in force under s10D or s10E, and
  - police officer are empowered to search the person/thing
  - Offence to obstruct or hinder the search.



For Official Use Only

OFFICIAL: Sensitive



VICTORIA POLICE

## Further obligations

- Must provide name, rank and place of normal duty if asked by the subject (in writing if asked)
- No power to require name and address of subject **unless an offence is detected**
- If subject refuses to allow a search – consider obstruct/hinder provisions.
- Must not detain a subject for a period longer than reasonably necessary to conduct a search of person/thing
- CCoP must report to Minister number of searches conducted under s10G



For Official Use Only

OFFICIAL: Sensitive



VICTORIA POLICE

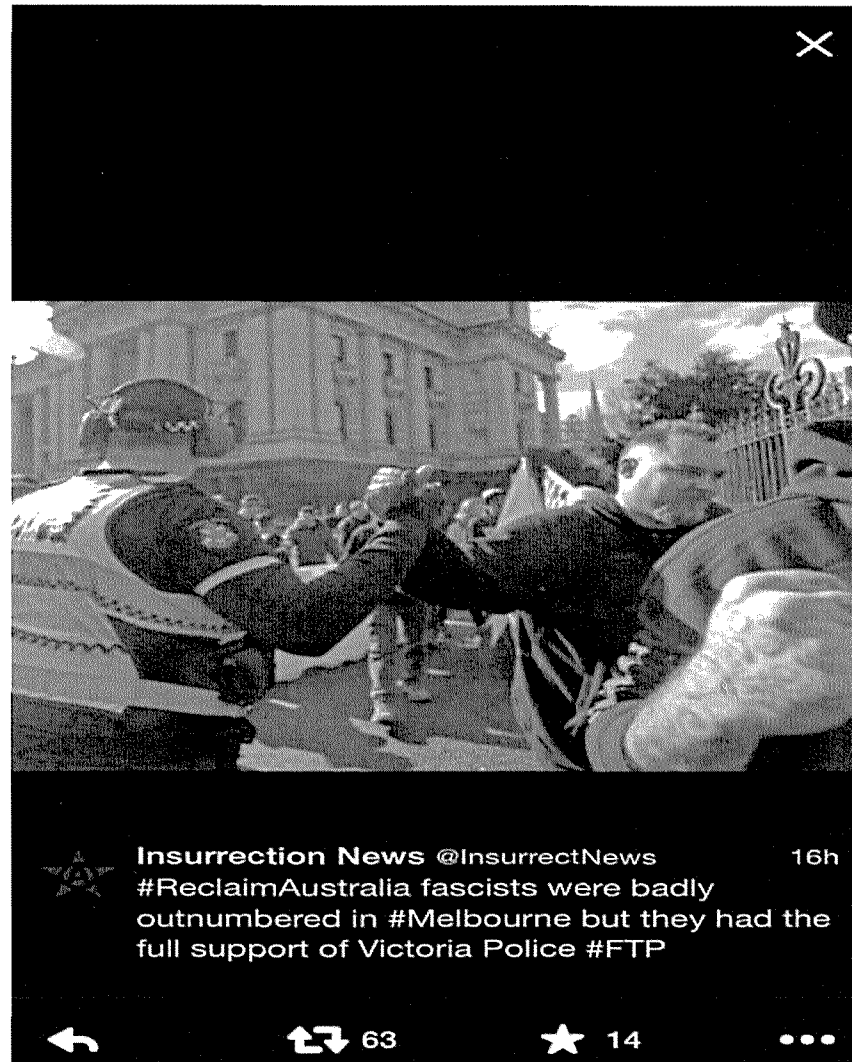
# Risks and Issues

- Civil suits re excessive use of force, misapplication of force
- *Charter of Human Rights and Responsibilities Act* concerns
- Professional Standards Command complaints
- Media (Print, TV and social media)
- Lack of action re low level offending





VICTORIA POLICE







VICTORIA POLICE



For Official Use Only

OFFICIAL: Sensitive



VICTORIA POLICE



SUPPORT ALBERTA COPS

## KEYBOARD WARRIORS

MAJORED IN POLICING AND LAW DEGREES BY WATCHING TV



For Official Use Only

OFFICIAL: Sensitive



VICTORIA POLICE

# Policy and Guidelines

- VPMP – Arrests and warrants to arrest
- VPMP – Police attendance at events and incidents
- VPMP – Designated areas: Conducting searches and issuing directions
- VPMP – Death and Serious injury incidents involving police
- VPMP – Public Order
- VPMG – Operational debriefings
- VPMG – Move on Powers
- VPMG – Crowd Control
- VPMG – Operational safety and equipment
- VPMG – Recording Use of Force



For Official Use Only

OFFICIAL: Sensitive



VICTORIA POLICE

# Questions? Discussions? Observations?



For Official Use Only

OFFICIAL: Sensitive